

KRT TRIAL MONITOR

Case 002/02 ■ Issue 40 ■ Hearings on Evidence Week 37 ■ 20-21 January 2016



Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDA Center for Human Rights and International Justice at Stanford University
(previously known as the UC Berkeley War Crimes Studies Center)

*“Our lives were so miserable under the regime, that is 1975-1979,
and nothing could compare to the misery that we received”*

- Civil Party Lach Kry

I. OVERVIEW

The Trial Chamber heard the majority of testimony this week in closed court. ‘In camera’ sessions were held throughout the day on Monday and Tuesday for witnesses who are part of the investigation into Cases 003 and 004. The morning sessions of the following two days were also closed, to hear from 2-TCW-938, although the reason for the closed session was not disclosed by the Chamber. Summaries of the testimony of these three witnesses will be included in future reports once redacted transcripts of the closed proceedings have been made available to monitors. When hearings were again held in public on Wednesday afternoon, the Chamber introduced the only individual to appear publicly this week; Civil Party Mr. Lach Kry, who was heard via audio link due to his poor health.¹ Lach Kry provided testimony on the suffering he and his brother Lach Ni had experienced during the Democratic Kampuchea (DK) regime. He detailed the arrest of his brother’s ethnically Vietnamese wife and children in Pochen Dam Village, Svay Antor Commune, Prey Veng District, Prey Veng Province and also described the disappearance of two other mixed Khmer-Vietnamese families living there.² The testimony of this Civil Party concluded in the afternoon session on Thursday with his victim impact statement. The Trial Chamber will resume hearings on 25 January 2016 in open session with Civil Party 2-TCCP-869.

II. SUMMARY OF CIVIL PARTY TESTIMONY

A. Summary of Testimony by Civil Party Lach Kry

This week the Trial Chamber heard the testimony of Civil Party Lach Kry across four afternoon sessions via video-link, assisted by a representative of the Witness and Expert Support Unit (WESU).³ The Civil Party testified to the treatment of the ethnic Vietnamese during the DK period and focused primarily on the arrests and subsequent disappearances of his Vietnamese sister-in-law and her children. Lach Kry concluded his testimony by giving a statement of suffering asking two questions of the Accused Parties.

1. Civil Party's Background and Experience under the DK Regime

Lach Kry stated that he was born in Ponchen Dam Village, Svay Antor Commune, Prey Veng District, Prey Veng Province. One of six children, he had three brothers and two sisters. The Civil Party recalled that his eldest brother Lach Ni moved back from Phnom Penh to Ponchen Dam Village in 1968 with his new wife Som San, who was of Vietnamese ethnicity. Lach Kry recalled there were also two other families with ethnic Vietnamese members in Ponchen Dam Village at that time; one was Ngang, whose parents were Vietnamese but who had a Khmer wife, and the other was Chuy; a Vietnamese man who had a Khmer wife. The Civil Party testified that his sister-in-law's ethnicity was commonly known, as she could speak Vietnamese and had an accent when she spoke Khmer. According to the Civil Party, the treatment of San and the two other ethnically Vietnamese people in the village was no different from the treatment of the Khmer until the DK period began. He said that in October 1978, 80% of villagers were evacuated to Kampong Som on the road to Som Miet. It was this evacuation that resulted in the loss of 11 members of the Civil Party's family: his children, wife, siblings, father and mother.

2. Arrest of Lach Ni's Family

According to the Civil Party, in November 1977 his brother's wife was arrested, together with their five children, in line with what was alleged by the Civil Party as a "well-known" policy that women of Vietnamese ethnicity and children with Vietnamese mothers were arrested and taken away. The Civil Party recalled that three militiamen, one named Lon Ngoy who was chief of security in Svay Antor, came to take Som San and her five children and take them to a "study session." He said that he witnessed this arrest along with 20 other workers including Lach Ni. The children were collected from their respective working areas and then driven away by horse-cart. Lach Kry recounted that, after his brother witnessed the arrest of his entire family, he collapsed and suffered from severe "psychotic" grief for the next six months. When questioned about the fate of his brother's family, the Civil Party said he never saw them again. He declined to speculate on what had happened to them. In 1978, approximately six months after the arrest of Lach Ni's family, he was instructed by *Angkar* to take part in a wedding ceremony of 20 couples, at which time he was married to a new wife, although the Civil Party said that his brother was still in love with his first wife at the time.

3. Treatment of Other Vietnamese People in Pochen Dam Village

Lach Kry noted that before the arrival of Khmer Rouge (**KR**) cadres in his region in 1970, there were many ethnic Vietnamese families living happily amongst the ethnic Khmer people. However, he testified that upon the arrival of the KR forces, 10 Vietnamese families fled to Vietnam. According to the Civil Party, after this only three ethnic Vietnamese families remained in Pochen Dam; the families of his brother Lach Ni, Ngang and Chuy.⁴ According to the Civil Party, Ngang was arrested in 1975 and Chuy was subsequently arrested in 1976, although their families were not. Lach Kry testified that both were ordered to cut *rumpeak*, a vine used for making baskets, however they never returned from these tasks. The Civil Party noted that Chuy, like Lach Ni's wife Som San, spoke Khmer with an accent and thus both were easily identifiable as ethnically Vietnamese. Under examination by Defense Counsel for Khieu Samphan, the Civil Party was asked whether Chuy had been a Vietnamese Soldier who later became an opium-seller. Lach Kry denied this, saying that Chuy was an ordinary villager.

4. Summary of Statement of Suffering and Questions to the Accused

At the end of his testimony, Lach Kry took the opportunity to make a statement of suffering and submitted two questions to the Accused. In his statement he first described how his life had been "miserable" during the DK period, and recounted in some detail the events that had befallen him during the regime, which had not already been covered during questioning. He then told the Chamber of his evacuation from Prey Veng to Battambang Province and his being assigned to

harvest rice there under bad working conditions without sufficient food. He recounted surviving a massacre along with 12 others, who subsequently all fled to Pursat but only 5 survived the journey. Lach Kry claimed that in Pursat he was arrested by Vietnamese troops who accused him of being a member of the “Pol Pot clique,” and was only released after January 1979. He finished by asking two questions: first Lach Kry wanted to know if they were aware of subordinates engaged in killing people and secondly he asked them if they had known, why they had allowed this to happen. Both Accused invoked their right to remain silent and declined to respond to the questions.

III. LEGAL AND PROCEDURAL ISSUES

As the majority of sessions this week were conducted ‘in camera,’ monitors are unable to comment on any legal and procedural issues that occurred during these sessions, but will do so once the redacted transcripts become available. During the only two open sessions of the week no legal or procedural issues were raised.

IV. TRIAL MANAGEMENT

The Trial Chamber only heard from one Civil Party in public session this week as the majority of sessions were held ‘in camera’. The Civil Party appeared via video link and was assisted by Mr. Ngang Samnang, a representative of WESU.

A. Attendance

Nuon Chea continued to waive his right to be present in the courtroom as usual this week and observed proceedings from the holding cell due to his poor health. Khieu Samphan was present in the courtroom during all sessions this week.

Judge Attendance: All Judges were present in the courtroom throughout the week, except that KRT monitors noted the absence of international Judge Jean-Marc Lavergne during afternoon session on 21 January. International Reserve Judge Martin Karopkin had replaced him in his seat, however this went unremarked upon by the Bench.

Civil Parties Attendance: Approximately 10 Civil Parties observed proceedings from inside the courtroom each day this week.

Parties: All Parties were properly represented in the courtroom throughout the week.

Attendance by the public: Monitors noted that, possibly due to poor public communication, approximately 100 villagers arrived to attend hearings in the afternoon on 21 January, however the last minute decision to extend the closed session into the first session after lunch meant that the group had to wait outside the courtroom until 2:40pm when the session finally opened to the public.

DATE	MORNING	AFTERNOON
Monday 18/01/2016	<i>Closed Session</i>	<i>Closed Session</i>
Tuesday 19/01/2016	<i>Closed Session</i>	<i>Closed Session</i>

Wednesday 20/01/2016	<i>Closed Session</i>	<ul style="list-style-type: none"> ▪ Approximately 90 villagers from Takeo Province and 14 villagers from Phnom Sruoch District, Kampong Speu Province ▪ Two foreign observers
Thursday 21/01/2016	<i>Closed Session</i>	<ul style="list-style-type: none"> ▪ Approximately 100 villagers from Tuek Chhou District, Kampot Province

B. Time Management

As announced last week, the Trial Chamber held hearings ‘in camera’ for Monday and the morning session of Tuesday this week, hearing witnesses 2-TCW-984 and 2-TCW-938.⁵ It was later announced on the Court website and via its social media accounts that the afternoon session on Tuesday, as well as the morning sessions of both Wednesday and Thursday would also be held in closed session. In the two open afternoon sessions the Trial Chamber successfully completed the examination of Civil Party Lach Kry via video link from his residence at Prey Veng province due to his poor health. Despite the additional challenges presented by video-link, Lach Kry’s testimony proceeded smoothly and there were no interruptions to proceedings

C. Courtroom Etiquette

There were no noteworthy breaches of courtroom etiquette this week.

D. Translation and Technical Issues

There were a number of translation issues this week regarding mistranslations from Khmer to English which impeded the ability of those listening to fully understand some parts of Lach Kry’s testimony. Some examples of this include: the name of place in Khmer “*Dey Klanh*” being translated in English to “other areas”, “village chief” into “villager”, “during 1970” into “from time to time”, “50 people” into “us” and “*Thvea Dambuk* mountain” into “a small hill.” In addition to some minor technical interruptions that were easily resolved, on 21 January monitors in the press room noted that although the audio feed was working, the live video feed was not for approximately 10 minutes. Although Lach Kry’s appearance via video link could have presented technical problems, his testimony proceeded with minimal interruption.

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 18/01/2016	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	N/A
Tuesday 19/01/2016	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	N/A
Wednesday 20/01/2016	13:32	<i>Closed session</i>	<i>Closed session</i>	14:41-15:00	16:02	2 hours 11 minutes

Thursday 21/01/2016	14:41	<i>Closed session</i>	<i>Closed session</i>	<i>Closed session</i>	16:09	1 hours 28 minutes
Average number of hours in public session				1 hours and 49 minutes		
Total number of hours in public this week				3 hours and 39 minutes		
Total number of hours, day, weeks at trial				503 hours and 10 minutes		
138 TRIAL DAYS OVER 40 WEEKS						

*This report was authored by Alexander Benz, Borakmony Chea, Caitlin McCaffrie, Elizabeth Orr, Thi Son, Lina Tay and Penelope Van Tuyl as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



Unless specified otherwise,

- the documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations made By AIJI staff; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case001	<i>The Case of Kaing Guek Eavalias “Duch” (CaseNo.001/18-07-2007-ECCC)</i>
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan (CaseNo.002/19-09-2007-ECCC)</i>
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
DSS	Defense Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Trial Chamber, “Decision on Video-Link for 2-TCCP-844” (20 January 2016) E385.

² For a summary of THENG Phal’s testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue 38, Hearings on Evidence week 35 (5-8 January 2016) pp. 3-4.

³ Civil Party Mr. LACH Kry (2-TCCP-844) was questioned in the following order: President NIL Nonn; international lead co-lawyer for civil parties, Marie GUIRAUD, national deputy co-prosecutor SONG Chorvoin; international co-prosecutor Nicholas KOUMJIAN; international defense counsel for Nuon Chea, Victor KOPPE; international defense counsel for Khieu Samphan, Anta GUISSÉ; national defense counsel for Khieu Samphan, KONG Sam Onn.

⁴ These names are corroborated by the testimony of THENG Phal, who testified on 5 January.

⁵ See Trial Chamber’s oral ruling on the appearance of Witnesses 2-TCW-984 and 2-TCW-938 in CASE 002/02 KRT TRIAL MONITOR, Issue 39, Hearings on Evidence week 36 (11-13 January 2016) p. 7.